IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6441 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHKUMAR SINDHI GOVINDLAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6441 of 2001

MR DM THAKKAR for Petitioner No. 1

MR SS PATEL AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 11/10/2001

ORAL JUDGEMENT

1. In exercise of the powers conferred under sub-section 2 of section 3 of the Prevention of Black-Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the Act' for short), the District

Magistrate, Mehsana, vide order dated July 21, 2001, Annexure A to the petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that the petitioner is engaged in the in the business of driving. On July 6, 2001, District Supply Officer, Mehsana, received information that in a vehicle bearing registration No. GJ-2U-8885 stock of wheat and rice meant for Public Distribution is transported to Visnagar. It is alleged that the said stock belongs to the fair price shop owner Galbaji Thakore and Daboda Cooperative Society, who lifted the above stock from the Government godown and transported the same in the vehicle hired by the petitioner. The said stock was delivered to Kishan Traders and Jain Trading Company by the above persons together with the petitioner. Thus, by unauthorizedly purchasing the stock of wheat and rice for the purpose of monetary gain, the petitioner has sold it without any licence or permit and thereby has acted in a manner prejudicial to the civil supplies and, therefore, he is detained by the detaining authority in exercise of powers under Section 3 (2) of the Act.

3. The petitioner has challenged the order of detention on various grounds. Mr. Thakkar, learned advocate for the petitioner has however restricted his arguments to the point that documents mentioned in paragraph 11 of the representation dated August 2, 2001 sent to the District Magistrate, Mehsana by the detenu have not been supplied to him so far. Therefore, according to him, non-supply of the documents pari passu has seriously prejudiced the right of the detenu of making effective representation and thereby violated the safeguard enshrined in Article 22 (5) of the Constitution and it has vitiated the order of detention. He therefore contended that continued detention of the petitioner has become illegal and on this sole ground the petition is required to be allowed and the petitioner may be set at liberty forthwith.

4. Mr. S.S. Patel, learned AGP who appears on behalf of respondent Nos.1 to 3 has opposed the petition by filing affidavits in reply one sworn by P.G. Vyas, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar and another sworn by A.S. Patel, District Magistrate, Mehsana. Similarly, Ms. P.J. Davawala, learned counsel who is appearing on behalf of respondent No.4 has also filed affidavit in

reply sworn by S.L. Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. Mr. Patel, learned AGP contended that the documents demanded by the detenu while making his representation dated 2.8.2001 are the copies of the Control Order and Government notification which are easily available from the Law Books Stall and they are not special documents which the authority is bound to supply and, therefore, the detaining authority in paragraph 5 of the affidavit has categorically stated that the copies of the laws or Government orders are not supplied to the detenu along with the grounds of detention and, therefore, the documents demanded by the petitioner are not supplied to the petitioner. He, therefore, contended that the documents which are demanded by the detenu are rightly not supplied and on this count the petitioner is not entitled to claim any relief and urged to dismiss the petition.

5. I have considered the submissions advanced by the learned advocates for the parties. I have also perused the averments made in the petition, the documents annexed thereto, including the representation dated 2.8.2001 and the impugned order of detention.

6. On having perusal of the representation dated August 2, 2001, sent by the detenu to the District Magistrate the petitioner has in paragraph 11 thereof has specifically stated that he has not been supplied with the copies of the documents which are referred to and relied upon in paragraph 3 of the grounds of detention by the detaining authority, that is, copy of the Control Order 1981, Control Order 1977 and extract of provisions of section 3 and 7 of the Essential Commodities Act, 1955 and lastly a copy of the Government Notification dated January 12, 1997. It was further stated that non-supply of the documents amounts to non-communication of grounds and, therefore, the detenu could not make effective representation and non-supply of the documents pari passu has violated the right guaranteed under Article 22 (5) of the Constitution.

7. On having perusal of the reply affidavits, it is nowhere stated that the authorities have supplied the documents mentioned in paragraph 11 of the representation and it is an admitted position that the detaining authority has not supplied the documents referred to in para 11 of the representation and it has seriously prejudiced the right of the petitioner of making an effective representation and, therefore, the right

enshrined under Article 22 (5) of the Constitution is infringed.

8. The Supreme Court in the case of Mohd. Zakir v. Delhi Administration and others, AIR 1982 SC 696 held that if the documents relied on by the authorities are not supplied with grounds of detention, the order of detention is illegal. It is further held that it is a constitutional mandate which requires the detaining authority to give the documents relied on or referred to in the order of detention pari passu in grounds of detention in order that the detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22 (5) of the Constitution.

9. Similar view is expressed by this Court in the case of Koli Sureshbhai Balabhai Parmar v. District Magistrate, Bhavnagar, 2000 (2) GLH 540. In view of the judgments of the Supreme Court and this Court, non-supply of the documents pari passu though demanded is violative of Article 22 (5) of the Constitution as it adversely affected the right of the petitioner of making effective representation before the authority concerned. On this sole ground, continued detention of the petitioner has become illegal and the impugned order of detention is vitiated. Therefore, the petition is required to be allowed and the detenu is required to be set at liberty forthwith.

10. For the foregoing reasons, continued detention of the petitioner - detenu has become illegal. Therefore, the petition succeeds and accordingly it is allowed. The impugned order of detention is quashed and set aside. The petitioner - detenu is required to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. Direct service is permitted.

(A.M. Kapadia, J.)

(karan)